

1 THE HONORABLE THOMAS O. RICE
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9 IN UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF WASHINGTON

11 BRIAN TACKETT,

12 Plaintiff,

13 vs.

14 PROVIDENCE SACRED HEART
15 MEDICAL CENTER, KAVITHA
16 CHAGANUR, MD,

17 Defendants.

18 Cause No. 2:24-cv-00262-TOR
19

20 DEFENDANT PROVIDENCE
21 SACRED HEART MEDICAL
22 CENTER AND KAVITHA
23 CHAGANUR, M.D.'S
24 OPPOSITION TO PLAINTIFF'S
25 MOTION FOR LEAVE TO FILE
26 "SECOND" AMENDED
27 COMPLAINT

28 Defendants, Providence Sacred Heart Medical Center and Kavitha
29 Chaganur, MD, by and through their attorneys of records, Markus W. Louvier, of
30 the law firm Evans, Craven & Lackie, P.S., hereby submits this Response in
Opposition to Plaintiff's Motion for Leave to File Second Amended Complaint.

DEFENDANT PROVIDENCE SACRED HEART MEDICAL CENTER AND KAVITHA
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1 **I. ARGUMENT & AUTHORITY**

2 Because Plaintiff's right to amend as a matter of course has expired,
3 amendment may only be permitted if granted leave by the Court. CR 15. However,
4 if the proposed amendment will result in prejudice to the non-moving party, then
5 the amendment should be denied. *See Wilson v. Horsley*, 137 Wn.2d 500, 505, 974
6 P.2d 316 (1999). In determining prejudice, a court may consider undue delay,
7 unfair surprise, and futility of amendment. *Haselwood v. Bremerton Ice Arena,*
8 *Inc.*, 137 Wn. App. 872, 889, 155 P.3d 952 (2007), *aff'd*, 166 Wn.2d 489, 210 P.3d
9 308 (2009). Additionally, courts may consider inexcusable neglect as a reason to
10 deny a motion to amend to add a defendant. *Haberman v. Washington Pub. Power*
11 *Supply Sys.*, 109 Wn.2d 107, 174, 744 P.2d 1032 (1987), *amended by* 109 Wn.2d
12 107, 750 P.2d 254 (1988). Finally, a trial court appropriately denies a motion to
13 amend if an amended claim is duplicative or futile. *Syputa v. Druck, Inc.*, 90 Wn.
14 App. 638, 649, 954 P.2d 279 (1998); see *Shelton v. Azar, Inc.*, 90 Wn. App. 923,
15 928, 954 P.2d 352 (1998) (holding that the trial court abused its discretion when it
16 granted a motion to compel because pursuit of new claim would be futile).

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1 Plaintiff's Motion to Amend should be denied where Plaintiff has
2 demonstrated undue delay and inexcusable neglect in previously failing to add Dr.
3
4 Timothy Ball as a defendant, and Plaintiff seeks to add futile claims.

5 **A. Plaintiff has unreasonably delayed in seeking to amend their
6 Complaint, shown inexcusable neglect in failing to add Dr. Ball as a
7 party, and presented no reasonable justification for such.**

8 A motion to amend may be denied where the proposed amendment will
9 cause prejudice to the nonmoving party as a result of undue delay. See *Wilson*, 137
10 Wn.2d at 505, 974 P.2d 316; *see also Herron*, 108 Wn.2d at 165-66, 736 P.2d 249.
11 Further, if the parties are apparent, or are ascertainable upon reasonable
12 investigation, the failure to name them will be held to be inexcusable. *Haberman*,
13 109 Wn.2d 174, 744 P.2d 1032. In cases where leave to amend to add additional
14 defendants has been sought, the Supreme Court of Washington has clearly held
15 that inexcusable neglect alone is sufficient ground for denying the motion. *Id.*;
16 *Tellinghuisen v. King Cty.*, 103 Wn.2d 221, 223, 691 P.2d 575 (1984); *South*
17 *Hollywood Hills Citizens Ass'n v. King Cty.*, 101 Wn.2d 68, 77, 677 P.2d 114
18 (1984). Here, Plaintiff has unreasonably delayed seeking a proposed "second"
19 Amended Complaint and demonstrated inexcusable neglect in repeatedly failing
20 to add Dr. Ball as a Defendant to this action.

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1 Plaintiff initially filed his lawsuit against Defendants Sacred Heart Medical
2 Center and Dr. Chaganur, among other defendants, nearly three years ago, on
3 March 31, 2021, in the United States District Court of Montana. ECF No. 1.
4 Plaintiff continued to file his amended complaints against Defendants as follows:
5

6 April 12, 2021: First Amended Complaint. ECF No. 5.
7 May 8, 2021: Second Amended Complaint. ECF No. 10.
8 August 3, 2021: Third Amended Complaint. ECF No. 43.
9 November 29, 2021: Fourth Amended Complaint. ECF No. 84.
10 March 6, 2022: Fifth Amended Complaint. ECF No. 109.

11 On July 29, 2024, the Montana District Court severed the claims against
12 these Washington Defendants and transferred the claims to the United States
13 District Court for the Eastern District of Washington. ECF No. 121. Plaintiff then
14 filed a motion to amend his Complaint on September 11, 2024. ECF No. 126.
15 Plaintiff's most recent amended Complaint was filed on November 3, 2024. ECF
16 No. 133. After Plaintiff filed a Motion for Default on Christmas Day, Defendants
17 responded to this Amended Complaint on December 26, 2024. ECF Nos. 136 and
18 137. Plaintiff now files another motion to amend his Complaint, seeking to add
19 Dr. Timothy Ball, M.D. as a Defendant and a claim for punitive damages. ECF
20 No. 144.
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1 Here, Plaintiff was well aware of his claims against these Defendants, as
2 well as any potential claims against Dr. Ball, back in 2021. He has had ample
3 opportunity to add a party to his claim. Plaintiff has amended his Complaint at
4 least 6 times since 2021. Plaintiff has offered no legitimate explanation as to why
5 he did not previously include Dr. Ball in his earlier Amended Complaints. Plaintiff
6 even admits in his Motion for Leave to file his newly proposed amended complaint
7 that "**Dr. Ball was notified in 2021 of this action and Plaintiff's intent to sue**
8 **him.**" ECF No. 144 at pg. 4. However, Plaintiff has intentionally failed to name
9 Dr. Ball as a Defendant for nearly four years.

14 Further, Plaintiff was certainly aware of his potential claims against Dr. Ball
15 based on Plaintiff's expert review conducted by Dr. Alexander Marmureanu.
16 Plaintiff's expert, in his report, which was filed with the court on March 16, 2025,
17 contains opinions regarding the care Dr. Ball provided to the patient Ms. Tackett.
18 ECF No. 144-2. Plaintiff earlier disclosed this same expert report by Dr.
19 Marmureanu as part of his Rule 26 initial disclosures. Such expert review was
20 conducted prior to the transfer of this claim to Washington and clearly indicates
21 Plaintiff's knowledge of his potential claims against Dr. Ball.

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1 Plaintiff's only proffered excuse for such a delay and neglect is that Plaintiff
2 did not have information regarding Dr. Ball's relationship to Defendant
3 Providence until after receipt of Defendants' discovery responses. ECF No. 144 at
4 pg. 3. Such information is irrelevant to whether Dr. Ball could have been named
5 as a party without such delay.

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8 Defendants will undoubtedly be prejudiced if Plaintiff is allowed to amend
9 his Complaint. Plaintiff has waited a superfluous amount of time to add additional
10 known parties. Plaintiff's unreasonable delay and neglect should not be permitted.
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13 **B. Plaintiff's sought claims against Dr. Timothy Ball, M.D. and sought
14 punitive damages claims are futile.**

15 A court may deny a motion to amend if an amended claim is duplicative or
16 futile. *Syputa v. Druck, Inc.*, 90 Wn. App. 638, 649, 954 P.2d 279 (1998). A court
17 properly denies a motion to amend a pleading when the proposed amendment is
18 futile. *Ino Ino, Inc. v. City of Bellevue*, 132 Wn.2d 103, 142, 937 P.2d 154 (1997)
19 (plurality opinion). A claim is futile "where there is no evidence to support or
20 prove existing or additional allegations and causes of action." *Nakata v. Blue Bird,*
21 *Inc.*, 146 Wn. App. 267, 279, 191 P.3d 900 (2008).

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Here, Plaintiff seeks to add Dr. Timothy Ball, M.D., as a new Defendant to this action; such claims against Dr. Ball are futile where Plaintiff's claims are not timely plead. Finally, Plaintiff seeks to add a punitive damages claim against all defendants, however such claim is futile where it is not actionable under Washington law. As such, Plaintiff's motion should be denied.

1. Plaintiff's claims against Dr. Timothy Ball, M.D. are not timely according to the applicable statute of limitations.

Plaintiff's claims arise from health care provided to Plaintiff's wife, Robbie Tackett, prior to her death on July 31, 2019. The relevant Washington health care providers administered care and treatment to Ms. Tackett in November 2018.

Plaintiff's claims against Dr. Timothy Ball are time barred by RCW 4.16.350(3):

(3) An entity, whether or not incorporated, facility, or institution employing one or more persons described in subsection (1) of this section, including, but not limited to, a hospital, clinic, health maintenance organization, or nursing home; or an officer, director, employee, or agent thereof acting in the course and scope of his or her employment, including, in the event such officer, director, employee, or agent is deceased, his or her estate or personal representative; **based upon alleged professional negligence shall be commenced within three years of the act or omission alleged to have caused the injury or condition, or one year of the time the patient or his or**

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**EVANS, CRAVEN
& LACKIE, P.S.**

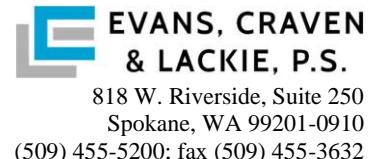
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her representative discovered or reasonably should have discovered that the injury or condition was caused by said act or omission, whichever period expires later, except that in no event shall an action be commenced more than eight years after said act or omission.

In a medical negligence cause of action, the onus is on the plaintiff to file suit within the timeframes established by RCW 4.16.350(3). Here, Plaintiff now attempts to add Dr. Timothy Ball as a defendant alleging the same claims of medical negligence. As previously stated, Plaintiff had actual knowledge of his potential claims against Dr. Ball, at the latest, in 2021. Again, Plaintiff admits in his Motion for Leave to file his newly proposed amended complaint that “Dr. Ball was notified in 2021 of this action and Plaintiff’s intent to sue him.” Moreover, Plaintiff likely knew of his potential claim against Dr. Ball as early as July 31, 2019, and the alleged malpractice occurred as early as November 2018.

Here, Plaintiff did not file within three years of the alleged malpractice by Dr. Ball. There can be no argument that Plaintiff was unaware of such claims or the statute is otherwise inapplicable, since he threatened suit against Dr. Ball in 2001. As such, any claims against Dr. Ball regarding this matter are precluded by RCW 4.16.350(3)'s three-year statutory provision. It thus follows that Plaintiff's

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1 motion to amend the complaint to include such time-barred claims should be
2 denied as futile.
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4 2. Plaintiff's sought punitive damages claim is not actionable.

5 Through Plaintiff's Motion to Amend his Complaint, Plaintiff seeks to add
6 a claim for punitive damages against Defendants "to clarify the relevance of
7 evidence as this case proceeds...and to put the Defendants on more specific notice
8 of the claims facing them." However, such a claim for punitive damages is not
9 actionable against Defendants.
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11 It is well established that punitive damages are contrary to Washington
12 public policy. *Dailey v. N. Coast Life Ins. Co.*, 129 Wn.2d 572, 575, 919 P.2d 589
13 (1996). Washington state has long committed itself to the view that punitive
14 damages "**cannot be recovered except when explicitly allowed by statute.**"
15 *Grays Harbor County v. Bay City Lumber Co.*, 47 Wn.2d 879, 289 P.2d 975
16 (1955). Washington law permits only "compensatory damages [to] fully
17 compensate the plaintiff for all injuries to person or property, tangible or
18 intangible." *Barr v. Interbay Citizens Bank of Tampa*, 96 Wn.2d 692, 700, 635
19 P.2d 441, 649 P.2d 827 (1981) (*citing Spokane Truck & Dray Co. v. Hoefer*, 2
20 Wash. 45, 52-53, 25 P. 1072 (1891)).
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1 Here, Plaintiff brings claims of medical negligence under RCW 7.70.
2 Punitive damages are not authorized under the Washington medical malpractice
3 statute. An amendment to add a claim of punitive damages would in no way
4 “clarify the relevance of evidence” where such damages are not permissible. Thus,
5 Plaintiff’s claim for punitive damages would be futile. As such, Plaintiff’s Motion
6 should be denied.
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10 **II. CONCLUSION**

11 Based on the foregoing argument and authority, Defendants respectfully
12 request that this Court enter an order denying Plaintiff’s Motion for Leave to
13 Amend Complaint.
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16 DATED this 23rd day of March, 2025.

17 EVANS, CRAVEN & LACKIE, P.S.
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CERTIFICATE OF SERVICE

I hereby certify that on March 23, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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